

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KRISTOFFERSON THOMAS,

Defendant-Appellee.

UNPUBLISHED

January 18, 2000

No. 216479

Ingham Circuit Court

LC No. 98-073844-FH

Before: Doctoroff, P.J., and O'Connell and Wilder, JJ.

PER CURIAM.

The prosecutor appeals as of right from the trial court's order granting defendant's motion to suppress evidence and dismissing the case. We reverse and remand for further proceedings.

Defendant was charged with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He moved to suppress the cocaine, arguing that it was discovered as a result of an illegal search. A police officer had been informed that defendant had a misdemeanor warrant for his arrest. The officer later saw defendant riding a bicycle, stopped him, and placed him in the back of the police car while the officer confirmed the existence of the warrant. After determining that a valid warrant existed, the officer formally placed defendant under arrest. When the officer moved defendant's bicycle to place it in the trunk of the police car, he noticed that a handlebar grip was loose. The officer knew from his training that narcotics were often stored in the handlebars of bicycles. The officer therefore removed the grip and discovered cocaine inside the handlebar.

The trial court rejected the prosecutor's argument that the search was valid as incident to defendant's arrest. Accordingly, the trial court granted defendant's motion to suppress the evidence and dismissed the case. In making its ruling, the trial court concluded that defendant was seated in the police car when he was arrested; therefore, the bicycle was not in the immediate vicinity of defendant at the time of the arrest.

We review the trial court's ruling to suppress the evidence as resulting from an illegal search for clear error. *People v Hampton*, 237 Mich App 143, 148; ___ NW2d ___ (1999). A ruling is clearly

erroneous when it leaves this Court with the definite and firm conviction that the trial court was mistaken. *Id.* We conclude that the trial court clearly erred in suppressing the evidence in this case.

Generally, a search conducted without a warrant is unreasonable, subject to specifically established exceptions. *People v Borchard-Ruhland*, 460 Mich 278, 293; 597 NW2d 1 (1999). One exception is a search incident to an arrest, under which an officer may search the person arrested and the area within that person's immediate control for weapons or evidence. *Chimel v California*, 395 US 752, 762-763; 89 S Ct 2034; 23 L Ed 2d 685 (1969); *People v Houstina*, 216 Mich App 70, 75; 549 NW2d 11 (1996). A search incident to an arrest need not occur simultaneously with the arrest, but must be reasonably contemporaneous with it. *People v Hall*, 57 Mich App 553, 555; 226 NW2d 562 (1975).

Defendant argues that the bicycle was not within the area of his immediate control at the time of his arrest because he was not arrested until he was seated in the back of the police car. Indeed, at the preliminary examination, the police officer testified that he effectuated the arrest while defendant was in the back of the car. However, the officer had already ordered defendant into the back of the car, where he was not free to leave, in order to verify that a warrant existed for his arrest. A person is arrested when his or her liberty of movement is restrained, either through physical force or the submission to asserted authority. *California v Hodari D*, 499 US 621, 626; 111 S Ct 1547; 113 L Ed 2d 690 (1991); *People v Michael*, 181 Mich App 236, 238; 448 NW2d 786 (1989). At the time defendant submitted to the officer's authority, the bicycle was within his area of immediate control, and the search was reasonably contemporaneous with placing defendant in the police car. Therefore, the search was reasonable as incident to an arrest, and the trial court clearly erred in suppressing the evidence seized as a result of the search.

Moreover, in *People v Catanzarite*, 211 Mich App 573; 536 NW2d 570 (1995), this Court held that a search that occurred under similar circumstances was a valid search incident to an arrest. In *Catanzarite*, the defendant, who had been stopped for towing a trailer without a license plate, was detained while the police confirmed the existence of a warrant for his arrest. A leather bag was seized from the defendant and placed in the police car during this process. After the police confirmed the warrant, the defendant was arrested and handcuffed. The police then searched the bag and found cocaine. This Court held that the search was reasonable, noting that the defendant was in actual possession of the bag before he was placed under arrest, and that the search occurred within minutes of his arrest. *Id.* at 582. In the instant case, defendant was in actual possession of his bicycle before his arrest, and the search of the handlebar took place within minutes of his arrest. The search was valid, notwithstanding the fact that defendant was separated from the bicycle and was sitting in the police car at the time of the search.

Accordingly, the trial court's ruling suppressing the evidence and dismissing the case was clearly erroneous, and we reverse the court's order and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Peter D. O'Connell

/s/ Kurtis T. Wilder